United States Department of Labor
Employees' Compensation Appeals Board

S.M., Appellant	)	
and	)	**Docket No. 19-1634**
	)	**Issued: August 25, 2020**
U.S. POSTAL SERVICE, FORT POINT POST OFFICE, Boston, MA, Employer	)	

Appearances:
John L. Degeneres, Jr., Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 29, 2019 appellant, through counsel, filed a timely appeal from a February 11, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to the

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). By order dated August 20, 2020, the Board exercised its discretion and denied the request finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 19-1634 (issued August 20, 2020). The Board's *Rules of Procedure* provide that an appeal in which a request for oral argument is denied by the Board will proceed to a decision based on the case record and the pleadings submitted. 20 C.F.R. § 501.5(b).

Federal Employees' Compensation Act[3] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish bilateral osteoarthritis of the knees causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On November 27, 2017 appellant, then a 67-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed osteoarthritis of his knees due to factors of his federal employment. In a separate statement, he indicated that his job required him to be on his feet essentially all day while moving mail, packages, and tubs weighing up to 70 pounds; operating a riding jack for loading and unloading postal vehicles; and moving heavy pallets and postal containers. Appellant noted that he first became aware of his condition and its relation to his federal employment on October 26, 2017. On the reverse side of the claim form, the employing establishment indicated that he had voluntarily retired on August 31, 2016.

In a report dated September 28, 2015, Dr. Owen R. McConville, a Board-certified orthopedist, noted that appellant reported being an avid racquetball player who injured his knee and experienced episodic pain. He diagnosed degenerative arthritis of the right knee by x-ray. On November 16, 2015 and March 21, 2016 Dr. McConville reevaluated appellant for recurrent right knee swelling, occasional popping, and catching. Appellant reported experiencing discomfort while performing activities at work. Dr. McConville diagnosed possible meniscal injury and mild degenerative arthritis.

On February 6, 2016 Dr. Justin W. Kung, a Board-certified radiologist, reviewed x-rays of appellant's right knee dated September 28, 2015 revealing mild spurring in the lateral compartment reflecting degenerative change. On July 13, 2016 he reviewed a left knee radiograph which revealed mild degenerative changes in the left medial compartment.

A magnetic resonance imaging scan of the right knee dated March 25, 2016 revealed a complete anterior cruciate ligament tear, lateral meniscal posterior horn tear, medial translocation of the femur, chondromalacia, and joint effusion.

In an April 5, 2016 report, Dr. McConville noted that appellant had a right knee injury he apparently sustained while playing golf. He diagnosed degenerative arthritis of the knee, meniscal tear, and osteoarthritis. On April 21, 2016 Dr. McConville performed a right knee arthroscopy with partial medial and lateral meniscectomy and diagnosed medial meniscus tear, degenerative arthritis, and lateral meniscal tear. He evaluated appellant in follow up on April 29, 2016 and diagnosed status post right knee arthroscopy with partial medial and lateral meniscectomy.

Dr. Byron V. Hartunian, a Board-certified orthopedist, treated appellant on October 26, 2017 for complaints of pain in both knees, stiffness with restriction in mobility, occasional

[3] 5 U.S.C. § 8101 *et seq.*

instability of the right knee, and status post arthroscopic surgery on April 21, 2016. Appellant reported injuring his right knee while playing racquetball and underwent repair of the medial meniscus. He described working on his feet most of the day, lifting, carrying and moving up to 70 pounds, pulling postal containers weighing up to 1,000 pounds, and operating a riding jack for loading and unloading postal vehicles. Appellant also noted that his job required repetitive stooping, squatting, twisting, bending, and lifting. Dr. Hartunian diagnosed primary right and left knee joint arthritis with 3 millimeter cartilage interval at medial femorotibial joint. He opined that appellant had degenerative osteoarthritis of both knees that was most likely permanently aggravated by his work activities including lifting, stooping, squatting, twisting, and bending. Dr. Hartunian found that, over time, appellant's bilateral knee cartilage was degraded to the point that he lost significant joint space causing a permanent alteration in his anatomy. He further opined that the job of a mail handler, over a 26-year career, hastened appellant's osteoarthritis because of the continuous walking, stooping, and squatting. Dr. Hartunian indicated that arthritis was caused by a biological/chemical process where excessive impact loading and repeated local stresses on the cartilage surface result in chronic inflammation which causes a chemical change in the cartilage resilience. The cartilage becomes more susceptible to wear and tear from impact loading activities which results in accelerated loss of articular cartilage as a result of those activities as was documented in appellant's case. Dr. Hartunian concluded that the high impact loading work activities engaged in by appellant contributed to the development and progression of his bilateral knee arthritis.

In a February 6, 2018 development letter, OWCP advised appellant of the deficiencies of his claim. It requested that he submit additional factual and medical evidence and provided a questionnaire for his completion. In a separate letter of even date, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to respond.

In reports dated July 28 and September 14, 2017, Dr. Iraj Aghadasi, a Board-certified internist, diagnosed unspecified osteoarthritis, asthma, and inflammatory spondylopathy. An x-ray of the right knee dated July 20, 2017 revealed mild tricompartmental degenerative changes.

On August 16, 2017 Dr. McConville diagnosed mild osteoarthritis of both knees, status post arthroscopic surgery on the right knee in 2016 with improved knee function.

In an office visit note dated August 16, 2017, Dr. Kung reviewed right knee radiographs taken that day which revealed medial compartment joint space interval measuring 3 millimeters, lateral compartment joint space interval measuring 4 millimeters, with mild spurring. The left knee radiograph revealed medial compartment joint space interval measuring 3 millimeters, and lateral compartment joint space interval measuring 5.5 millimeters.

A March 2, 2018 statement from J.R., supervisor of distribution operations, indicated that appellant's duties consisted of operating a motorized riding pallet jack which did the majority of lifting and moving containers of mail and he had a break every two hours.

In a March 2, 2018 response to OWCP's February 6, 2018 development letter, appellant indicated that he had injured his right knee while playing racquetball 20 to 30 years prior. He underwent arthroscopic surgery for that injury and remained asymptomatic until 2014 to 2015. On March 23, 2018 appellant responded to J.R.'s statement and indicated that while operating a riding

pallet jack appellant would bend his knees, twist to steer the jack, and stoop and squat when entering trucks with a low overhead.

By decision dated June 4, 2018, OWCP denied appellant's occupational disease claim finding that the medical evidence of record was insufficient to establish causal relationship between his bilateral knee osteoarthritis and the accepted factors of his federal employment.

On June 15, 2018 appellant, through his then-counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on November 29, 2018. In support of his request he submitted a November 20, 2018 report from Dr. Hartunian who indicated that as a mail handler and equipment operator appellant moved large volumes of mail in tubs and containers which required lifting, stooping, squatting, twisting, and bending, and contributed to the progression of his knee arthritis. He diagnosed bilateral degenerative osteoarthritis.

On November 24, 2018 appellant further described his work duties and reported operating a motorized pallet jack that did not have a seat and constantly bending his knees and twisting to operate the steering column. He submitted a statement from R.K, a retired supervisor of distribution operations, who advised that appellant's position required him to bend, flex, stoop, and twist in a repetitive manner. Another statement from R.A., a mail handler, advised that appellant was required to unload and load trucks, breakdown mail, lift, bend, twist, and stoop on hard surfaces.

By decision dated February 11, 2019, an OWCP hearing representative affirmed the June 4, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,[5] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[6] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying

[4] *Id*.

[5] *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] 20 C.F.R. § 10.115; *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[11]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[12]

ANALYSIS

The Board finds that this case is not in posture for decision.

In his report dated October 26, 2017, Dr. Hartunian opined that appellant had bilateral osteoarthritis that was permanently aggravated by his work activities including lifting, stooping, squatting, twisting, and bending. He opined that over time the cartilage of appellant's knees was degraded to the point that appellant lost significant joint space which was a permanent alteration in his anatomy. Dr. Hartunian provided a proper factual and medical history of injury, noting that appellant's 26-year history as a mail handler hastened his osteoarthritis because of the continuous walking, stooping, and squatting. He explained that arthritis was caused by a biological/chemical process where excessive impact loading and repeated local stresses on the cartilage surface resulted in chronic inflammation and caused a chemical change in the cartilage resilience. Dr. Hartunian indicated that the cartilage became more susceptible to wear and tear from impact loading activities which resulted in accelerated loss of articular cartilage as a result of those activities as was documented in appellant's case. In conclusion he opined that the high impact loading work

[8] *See T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[11] *E.W.*, *supra* note 5; *Gary L. Fowler*, 45 ECAB 365 (1994).

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

activities in which appellant engaged in contributed to the development and progression of his bilateral knee arthritis.

The Board finds that this report from Dr. Hartunian is sufficient to require further development of the medical evidence. Dr. Hartunian is a Board-certified physician in orthopedics who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship and he provided a comprehensive understanding of the medical record and case history. His report provides a pathophysiological explanation as to how appellant's lifting, stooping, squatting, twisting, and bending at work resulted in his diagnosed bilateral knee osteoarthritis. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.[13] Accordingly, Dr. Hartunian's medical opinion is well-rationalized and logical and is therefore sufficient to require further development of appellant's claim.[14]

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[15] OWCP has an obligation to see that justice is done.[16]

On remand OWCP shall refer appellant, a statement of accepted facts, and the medical record to an appropriate specialist. The chosen physician shall provide a rationalized opinion as to whether the diagnosed conditions are causally related to the accepted factors of appellant's federal employment. If the physician opines that the diagnosed conditions are not causally related, he or she must explain, with rationale, how or why the opinion differs from that of Dr. Hartunian. Following this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that this case is not in posture for decision.

[13] *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein.

[14] *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

[15] *See id. See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

[16] *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 25, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board